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UNITED STATE DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
ZBIGNIEW PAPIEZ,

Plaintiff,

-against-

HOME DEPOT U.S.A., INC.

Defendant.
-----X

Docket No.: 15-CV-2845
(ERK) (RML)

**DEFENDANT HOME DEPOT
U.S.A., INC.'S RULE 26
EXCHANGE OF EXPERT
WITNESS INFORMATION
OF PAUL KUFLIK, M.D.**

PLEASE TAKE NOTICE, that pursuant to Rule 34 of the Federal Rules of Civil Procedure, the Defendant HOME DEPOT U.S.A., INC., by and through undersigned counsel, LEWIS BRISBOIS BISGAARD & SMITH LLP, hereby make the following disclosure pursuant to Federal Rules of Civil Procedure 26(a)(2):

1. HOME DEPOT U.S.A., INC. may call the following individual as an expert at trial to present evidence under Federal Rules of Evidence 702, 703, and 705:

Paul L. Kuflik, M.D.
Icahn School of medicine at Mount Sinai
5 East 98th Street, 4th Floor, Box 1188
New York, New York 10029-6574

2. A copy of Dr. Kuflik's curriculum vitae is annexed hereto as **Exhibit "A"** setting forth his qualifications and list of his publications. Annexed hereto as **Exhibit "B"** is a copy of the cases in which he has testified in the last four years. Dr. Kuflik's report, dated January 25, 2017, is annexed hereto as **Exhibit "C"**. Dr. Kuflik's fee schedule setting forth the compensation to be paid for the study and testimony in this case is annexed hereto as **Exhibit "D"**. Please note also that trial testimony is \$15,000.00 per day and the cost for deposition is \$5,000.000 for up to three hours.
3. This disclosure is pursuant to Rule 26 and is not intended to limit the scope or substance of any expert called by the defendant at trial. This disclosure should not be

considered all encompassing, as expert testimony to be offered by this defendant shall depend, of necessity, upon the issues raised at trial by other experts and witnesses.

4. Defendant HOME DEPOT U.S.A., INC. and this expert reserve the right to supplement or modify the opinions set forth in the annexed report as new information is or may be obtained.
5. This expert may also rely or comment upon any additional depositions, any expert information exchanged, trial testimony and all exhibits thereto.
6. This expert may also be requested to rebut the positions and opinions, if any, of the defendant's expert witnesses, if any, at trial.

PLEASE TAKE FURTHER NOTICE that the Defendant HOME DEPOT U.S.A., INC. reserves the right to supplement and/or amend this disclosure up until and including the time of trial in this matter if necessary.

Dated: New York, New York
February 17, 2017

LEWIS BRISBOIS BISGAARD & SMITH LLP

By: _____

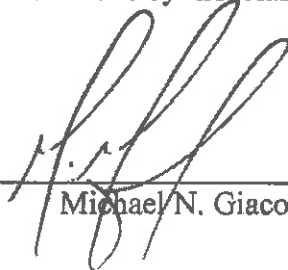
David M. Pollack (DP 6143)
Michael N. Giacobelli (MG 4170)
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Home Depot U.S.A., Inc.
77 Water Street, Suite 2100
New York, New York 10005
Telephone: 212.232.1300
Facsimile: 212.232.1399

To:

Edelman & Edelman, P.C.
Attorneys for Plaintiff
ZBIGNIEW PAPIEZ
61 Broadway, Suite 3010
New York, New York 10006
212.943.1200

CERTIFICATE OF SERVICE

Michael N. Giapopelli, an attorney duly admitted to practice before this Court, certifies that on February 17, 2017, he caused the within **DEFENDANT HOME DEPOT U.S.A., INC.'S RULE 26 EXCHANGE OF EXPERT WITNESS INFORMATION OF PAUL KUFLIK, M.D.** to be served upon the attorneys for plaintiff at the address set forth above by first class mail and facsimile.



Michael N. Giapopelli

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PAUL L. KUFLIK, M.D.
 912 Harvard Court
 Woodmere, NY 11598
 Pkuflik@verizon.net
 516-313-1900

Updated July 2014

CURRICULUM VITAE

HOSPITAL APPOINTMENTS

9/1983-4/1986	Clinical Coordinator: Hip Prostheses Hospital for Joint Diseases Orthopaedic Institute New York, NY
7/1985-6/1986	Chief Resident Department Orthopaedic Surgery Hospital for Joint Diseases Orthopaedic Institute New York, NY
1/1986-6/1986	Instructor in Surgery Physician Assistant Program Touro College Orthopaedic New York, NY
1/1987-12/1996	Assistant Attending Hospital for Joint Diseases Orthopaedic Institute New York, NY
7/1987-4/1989	Chief Orthopaedic Spine Service, Mount Sinai Hospital New York, NY
7/1987-Present	Attending in Orthopedics Booth Memorial Medical Center Queens, NY
3/1987-12/1996	Attending in Orthopedics Beth Israel Medical Center New York, NY
7/1990-11/2005	Attending in Surgery Putnam Hospital Center Carmel, NY
7/1991-12/1996	Chief Scoliosis Service Hospital for Joint Diseases Orthopaedic Institute New York, NY

PAUL L. KUFLIK, M.D.
 Curriculum Vitae

2

12/1996-12/2012	Associate Director The New York Spine Institute Beth Israel Medical Center New York, NY
1/2013- Present	Attending Spine Center, Department of Orthopedics, Mount Sinai Hospital

ACADEMIC APPOINTMENTS

1/1987-12/1996	Assistant Clinical Professor of Orthopaedic Surgery Mount Sinai Medical Center
9/1994-12/1996	Clinical Assistant Professor of Orthopaedic Surgery New York University Medical Center, New York
7/1998-12/2012	Assistant Clinical Professor of Orthopaedic Surgery Albert Einstein College of Medicine
1/2013-Present	Associate Professor Orthopaedic Surgery Mount Sinai School of Medicine

GAPS IN EMPLOYMENT

Not applicable

EDUCATION

9/1973-5/1977	Bachelor of Arts (Magna cum Laude) Psychology Queens College City University of New York New York, NY
9/1977-5/1981	Doctor of Medicine Upstate Medical College State University of New York Syracuse, NY

POSTDOCTORAL TRAINING

7/1981-6/1982	Intern: General Surgery Beth Israel Medical Center New York, NY Director of Surgery: Charles K. McSherry, M.D.
7/1982-6/1986	Resident: Orthopaedic Surgery

Paul L. Kuffik, M.D.
Certification Vice

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Hospital for Joint Diseases Orthopaedic Institute
New York, NY
Program Chairman: Victor R. Frankel, M.D., Ph.D.

7/1986-12/1986

Fellow: Spine Surgery
Toronto General Hospital
Toronto, Ontario
Fellowship Director: John P. Kostulk, M.D.
Primary Surgical Mentor: Stephen I. Russ, M.D.

LICENSE AND CERTIFICATION

Licenses

7/1983

State of New York
License #150968

2/1992

State of Florida
License #24361576

Certification

7/1989

Diplomat
American Board of Orthopaedic Surgery

1/2000-12/2009

Recertification
American Board of Orthopaedic Surgery

1/2010-12/2019

Recertification
American Board of Orthopaedic Surgery

HONORS AND AWARDS

9/1989

Elected to Alpha Omega Alpha

7/1986-12/1986

Albert M. Batchelor Traveling Fellowship
Hospital for Joint Diseases Orthopaedic Institute

2007

Top Doctor – 10 years
Orthopaedic Surgery
A New York Metro Area Top Doctor for 10 Years
Cecilia Connolly Medical Ltd.

2011-2012

Recipient – Best Doctors
Selected as one of The Best Doctors in America

Paul L. Kuffik, M.D.
Curriculum Vitae

PATENTS
Not applicable

OTHER PROFESSIONAL ROLES

1/1986-2003, 2006-2007	American Medical Association
7/1986-4/1994, 2012	New York State Medical Society
1988	Member – American Academy of Orthopaedic Surgeons
7/1989-Present	Diplomate American Board of Orthopaedic Surgery
3/1991-Present	Active Fellow – American Academy of Orthopaedic Surgeons
1992	Moderator for the spine section for the Alumni Scientific Meeting, Hospital for Joint Diseases
3/1994-12/1996	Section Editor for Spine for the Editorial Board of the Bulletin for Hospital for Joint Diseases Orthopaedic Institute
3/1998	Moderator for the spine section for the Alumni Scientific Meeting, Hospital for Joint Diseases
10/2000-Present	Scoliosis Research Society
9/2009-Present	Society for Minimally Invasive Spine Surgery
4/1994-Present	New York County Medical Society
7/1992-Present	North American Spine Society
1/1993-Present	New York State Society of Orthopedists

Paul L. Kuffik, M.D.
Cardenham Vitas

5

RESEARCH PROFILE

My research is focused on spinal deformity and clinical outcome studies related to disorders of the cervical and lumbar spine. Recent research projects include participation in a multicenter adult deformity outcome study, intervertebral dynamic disc spacer trial, and multicenter bone morphogenetic protein study. Also, I was co-investigator of a comparative study examining the efficacy of two interbody fusion techniques at restoring disc height, increasing neuroforaminal dimensions, and restoring lordotic alignment in the lumbosacral spine. Current projects include a collaborative study with pain management designed to evaluate whether brief lidocaine/steroid infusions improve postoperative pain and functional restoration. In addition, I am participating in several prospective studies assessing: 1) the influence of body mass index on outcome measures and perioperative complications and 2) sexual function and gender specific postoperative complications in patients with degenerative disease of the lumbar spine. My specific research focus is to continue to examine the outcomes of various surgical procedures and identify predictive clinical and radiographic features that ultimately improve the clinical outcomes of patients with spinal disorders. Further, I have a particular interest in minimally invasive spine surgery. My intent is to direct clinical outcome studies associated with minimally invasive procedures at Mount Sinai.

As a researcher, I have published 11 articles in peer-reviewed journals and have coauthored 3 book chapters. In addition, my collaborative work has been presented at over 30 regional and national conferences.

CLINICAL PROFILE

I am committed to providing optimal care of patients with complex spinal disorders and have been recognized as such by my peers. I have been awarded the prestigious "New York Metro Area Top Doctor for 10 years" and was selected as one of "The Best Doctors in America" in 2011. My particular expertise is in the application of segmental spinal instrumentation and minimally invasive techniques to treat disorders of the spine. I perform approximately 270 major spine surgeries per year and provide care for over 1500 outpatients in clinic yearly. Geographically, my referral base primarily comes from the tri-state area.

IMPACT

As Director of the Scoliosis Clinic at the Hospital for Joint Diseases Orthopaedic Institute, from 1987-1996, I treated thousands of pediatric and adult spinal deformity patients and gained wide recognition as a spinal deformity surgeon. As such, I served as the Spine Section Editor for the

Paul L. Koflik, M.D.
Curriculum Vitae

6

Editorial Board of the Bulletin for Hospital for Joint Diseases Orthopaedic Institute from 1995-1996. Currently, I am Associate Director of the Spine Institute at Beth Israel Medical Center.

My teaching efforts have been directed at training over 40 spine fellows in our comprehensive spine program at Beth Israel Medical Center. In addition, I was an active surgical and clinical mentor for our residents at Mount Sinai, Booth Memorial Medical Center, and Hospital for Joint Diseases. My academic role includes providing didactic lectures, research presentations, and case presentations to over 150 fellows and residents.

As well as an active clinical and research oriented practice, I am a member of several regional and national professional organizations. These memberships include the American Academy of Orthopedic Surgeons, the North American Spine Society, the Scoliosis Research Society, and the Society for Minimally Invasive Spine Surgery (which only selects ~20 new members each year).

GRANTS, CONTRACTS, FOUNDATION SUPPORT

PAST GRANTS

Title of Grant Not Applicable	Role in Project Not Applicable	Fellow Not Applicable	Direct Costs Not Applicable	Supplemental Info Not Applicable
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CURRENT GRANTS

Title of Grant Not Applicable	Role in Project Not Applicable	Fellow Not Applicable	Direct Costs Not Applicable	Supplemental Info Not Applicable
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PENDING GRANTS

Title of Grant Not Applicable	Role in Project Not Applicable	Fellow Not Applicable	Direct Costs Not Applicable	Supplemental Info Not Applicable
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Paul L. Kuffik, M.D.
Correspondence Vice

7

INDUSTRY-SPONSORED STUDIES

Project	Role in Project	Dates	Amount	Other Info
Neurosur. Project Title: SCORP: Bony HealthCare Fluorocortisone "A" Multi-Center, Randomized, Double-Blind, Placebo-Controlled, Parallel Design, 3-Arm Study to Investigate the Effect of Aprepitant on Transfusion Requirements in Patients Undergoing Elective Spinal Fusion Surgery TPA Temporal Trial Unit Number: 11789 - 001 n-0128 Project# 285-05	Co-Investigator at Both Jernal Medical Center % Effort/effort = 0%	December 4, 2006 - December 4, 2006	= 40	<ul style="list-style-type: none"> This was a Phase III clinical trial No subjects were enrolled, and no research took place at Both Jernal Medical Center The study drug was removed from the market
Neurosur. Project Title: SCORP: Bony HealthCare Prospective, Randomized Clinical Investigation of Recombinant Human Bone Morphogenetic Protein-2 and Composites Restore with the CD Horizon Spinal System for Postoperative Lumbar Fusion in Patients with Symptomatic Degenerative Disc Disease ID# 0000117 Project# 022-02	Co-Investigator at Both Jernal Medical Center % Effort/effort = <5%	April 1, 2002 - January 28, 2010	<ul style="list-style-type: none"> \$77,000 on 2/28/08 to support the Both Jernal Medical Center Research Program \$5,480 from 1/28/03-02/21/04 reimbursement for case report form and radiographic data 	
Neurosur. Project Title: SCORP: Bony HealthCare Prospective, Multicenter, Controlled Clinical Trial of an Artificial Cervical Disc - LP at a Single Level for Symptomatic Cervical Disc Disease ID# 0040006 Project# 003-05	Co-Investigator at Both Jernal Medical Center % Effort/effort = 0%	April 1, 2006 - Present	<ul style="list-style-type: none"> \$16,150 on 5/31/07-2/14/07 to support the Both Jernal Medical Center Research Program \$12,170 from 12/18/03-11/18/11 reimbursement for case report form and radiographic data 	

Paul L. Kuflik, M.D.
Curriculum Vitae

11

INDUSTRY-SPONSORED STUDIES (Continued)

Product	Role in Product	Dates	Amount	Other Info
Sponsor, Product Title: MEDCo DePuy "Two Year Follow Up of the Charlie Artificial Disc Compared to Anterior Lumbar Interbody Fusion with the BAC Cage" Project# 021-03	Co-Investigator at Beth Israel Medical Center % time/effort = 0%	April 4, 2003 -- September 30, 2003	• \$0	• No subjects were enrolled, and no research took place at Beth Israel Medical Center
Sponsor, Product Title: MEDCo Medtronic "Adult Deformity Outcomes Analysis" Project# 001-01	Co-Investigator at Beth Israel Medical Center % time/effort = 5%	March 12, 2001 -- February 7, 2005	• \$77,600 in 2003 to support the Beth Israel Medical Center Research Program	• This was an observational study
Sponsor, Product Title: MEDCo DePuy "B3 Charlie II Interventional Dynamic Disc Space" Project# 003-02	Co-Investigator at Beth Israel Medical Center % time/effort = 5%	July 10, 2003 -- July 30, 2005	• \$33,000 from 4/13/01-7/30/05	
Sponsor, Product Title: MEDCo Zimmer Spine, Convexus Inspi "A Clinical Study of the CONVEXUS Spinal System as a Motion Saver Device for Spinal Stabilization" Project# 000-05	Co-Investigator at Beth Israel Medical Center % time/effort = 0%	September 8, 2003 -- September 12, 2005	• \$1200 from 11/17/04-8/10/05	
Sponsor, Product Title: MEDCo Acel Medical, Inc "Lumbar Analysis and Bone Mapping of Facet Joints" Project# 210-09	Co-Investigator at Beth Israel Medical Center % time/effort = 0%	October 26, 2003 -- October 26, 2003	• \$0	• No subjects were enrolled, and no research took place at Beth Israel Medical Center

Paul I. Kuflik, M.D.
Curriculum Vitae

9

TRAINEES

Name	Level of Training	Role in Training & Exchange Dates of Training	Training Location	Training Center/Institution
Blanton, Robert	Spine Fellow	Surgical Mentor Aug 1, 1989-July 31, 1990	Hospital for Joint Diseases	
Lalicki, John	Spine Fellow	Surgical Mentor Aug 1, 1990-July 31, 1991	Hospital for Joint Diseases	
Levent, Troy	Spine Fellow	Surgical Mentor Aug 1, 1991-July 31, 1992	Hospital for Joint Diseases	
Levy, John	Spine Fellow	Surgical Mentor Aug 1, 1991-July 31, 1992	Hospital for Joint Diseases	
Barbo, John	Spine Fellow	Surgical Mentor Aug 1, 1993-July 31, 1994	Hospital for Joint Diseases	
Latina, Lynn	Spine Fellow	Surgical Mentor Aug 1, 1993-July 31, 1994	Hospital for Joint Diseases	
Brooks, Gerald	Spine Fellow	Surgical Mentor Aug 1, 1994-July 31, 1995	Hospital for Joint Diseases	
Polunsky, Michael	Spine Fellow	Surgical Mentor Aug 1, 1994-July 31, 1995	Hospital for Joint Diseases	
Wronsky, Yigal	Spine Fellow	Surgical Mentor Aug 1, 1995-July 31, 1996	Hospital for Joint Diseases	
Chern, William	Spine Fellow	Surgical Mentor Aug 1, 1996-July 31, 1996	Hospital for Joint Diseases	
O'Brien, John	Spine Fellow	Surgical Mentor Jan 1997-July 1997	State Israel Medical Center	
Reut, Robert	Spine Fellow	Surgical Mentor Aug 1, 1997-July 31, 1998	State Israel Medical Center	
Salpe, Leo	Spine Fellow	Surgical Mentor Aug 1, 1998-July 31, 1999	State Israel Medical Center	
Dunthorn, Lawrence	Spine Fellow	Surgical Mentor Aug 1, 1998-July 31, 1999	State Israel Medical Center	
Wagner, David	Spine Fellow	Surgical Mentor Aug 1, 1999-July 31, 2000	State Israel Medical Center	
Shaw, Mark	Spine Fellow	Surgical Mentor Aug 1, 2000-July 31, 2001	State Israel Medical Center	
Argente, Mark	Spine Fellow	Surgical Mentor Aug 1, 2000-July 31, 2001	State Israel Medical Center	

Paul L. Kuffik, M.D.
Cardiology Clinic

10

TRAINERS (Continued)

Name	Level of Training	Role in Training & Inclusion Dates of Training	Training Location	Training Center Substantive
Yetter, Dr.	Spine Fellow	Surgical Monitor Aug 1, 2001-July 31, 2003	Beth Israel Medical Center	
Hammond, Allen	Spine Fellow	Surgical Monitor Aug 1, 2003-July 31, 2003	Beth Israel Medical Center	
Henderson, David	Spine Fellow	Surgical Monitor Aug 1, 2003-July 31, 2003	Beth Israel Medical Center	
Chabaz, Mark	Spine Fellow	Surgical Monitor Aug 1, 2003-July 31, 2003	Beth Israel Medical Center	
Rogers, Craig	Spine Fellow	Surgical Monitor Aug 1, 2003-July 31, 2003	Beth Israel Medical Center	
Blacher, Mark	Spine Fellow	Surgical Monitor Aug 1, 2003-July 31, 2004	Beth Israel Medical Center	
Harrell, George	Spine Fellow	Surgical Monitor Aug 1, 2003-July 31, 2004	Beth Israel Medical Center	
Grasso, David	Spine Fellow	Surgical Monitor Aug 1, 2003-July 31, 2004	Beth Israel Medical Center	
Agulinski, Marc	Spine Fellow	Surgical Monitor Aug 2, 2004-July 31, 2005	Beth Israel Medical Center	
Randy, Robert	Spine Fellow	Surgical Monitor Aug 2, 2004-July 31, 2005	Beth Israel Medical Center	
Huang, John	Spine Fellow	Surgical Monitor Aug 1, 2004-July 31, 2005	Beth Israel Medical Center	
Rosenbaum, Cliff	Spine Fellow	Surgical Monitor Aug 1, 2005-July 31, 2005	Beth Israel Medical Center	
Sharma, Robin	Spine Fellow	Surgical Monitor Aug 1, 2005-July 31, 2006	Beth Israel Medical Center	
Tuyet, Art (Jial)	Spine Fellow	Surgical Monitor Aug 1, 2005-July 31, 2006	Beth Israel Medical Center	
Wolenski, Aaron	Spine Fellow	Surgical Monitor Aug 1, 2006-July 31, 2007	Beth Israel Medical Center	
Cheng, Eric	Spine Fellow	Surgical Monitor Aug 1, 2006-July 31, 2007	Beth Israel Medical Center	
Robinson, Mark	Spine Fellow	Surgical Monitor Aug 1, 2006-July 31, 2007	Beth Israel Medical Center	

Paul L. Kuflik, M.D.
Cardinal Viner

11

TRAINEES (Continued)

Name	Level of Trainee	Role in Training & Inclusion Dates of Training	Training Location	Trainee's Current Status/Assignment
Burkoff, David	Spine Fellow	Surgical Monitor Aug 1, 2007-July 31, 2008	Beth Israel Medical Center	
Joseph, Samuel	Spine Fellow	Surgical Monitor Aug 1, 2007-July 31, 2008	Beth Israel Medical Center	
Martensky, Marc	Spine Fellow	Surgical Monitor Aug 1, 2007-July 31, 2008	Beth Israel Medical Center	
Curran, Eshel	Spine Fellow	Surgical Monitor Aug 1, 2008-July 31, 2009	Beth Israel Medical Center	
Parvizi, Eyal	Spine Fellow	Surgical Monitor Aug 1, 2008-July 31, 2009	Beth Israel Medical Center	
Smith, Adam	Spine Fellow	Surgical Monitor Aug 1, 2009-July 31, 2010	Beth Israel Medical Center	
Hirschman, David	Spine Fellow	Surgical Monitor Aug 1, 2009-July 31, 2010	Beth Israel Medical Center	
Yegorov, Aron	Spine Fellow	Surgical Monitor Aug 1, 2010-July 31, 2011	Beth Israel Medical Center	
George, Zachary	Spine Fellow	Surgical Monitor July 1, 2011-June 30, 2012	Beth Israel Medical Center	
Lerner, Victor	Spine Fellow	Surgical Monitor Aug 1, 2011-July 31, 2012	Beth Israel Medical Center	

Paul L. Kuffik, M.D.
Curriculum Vitae

12

TEACHING ACTIVITIES

Teaching Activity Topic	Level	Date	Institute Level and Number of Lectures Taught, and Years	Number of hours week/month	End Summary	Years Taught
Physician Assistant Program	Department I	Instructor in Surgery	Physician assistants (25) Touss College Orthopaedic	4 hours/week		1/86-1/96
Resident Clinic	Department I	Clinical Mentor	Residents (50) Fellows (20) Hospital for Joint Diseases	Clinical Teaching: 1 day/week		1/87-11/96
Clinical and Didactic	Department I	Teaching orthopaedic house staff management of spinal disorders and spinal surgery	<ul style="list-style-type: none"> Mount Sinai (1/87-1/96) Residents (5) North Memorial Medical Center (7/87-12/96) Residents (1) Hospital for Joint Diseases (1/87-12/96) Residents (50) Fellows (20) 	20 hours/week		1/87-12/96
X-Ray Conference	Department I	Lecturer	Residents (100) Fellows (20) Hospital for Joint Diseases	1 hour/week		1/87-12/96
Journal Club	Department I	Lecturer	Residents (100) Fellows (20) Hospital for Joint Diseases	1 hour/week		1/87-12/96
Department Rounds	Department I	Surgeon in Chief Mentor	Residents (100) Fellows (20) Hospital for Joint Diseases	2 hours/week		1/87-12/96
Spine Fellowship Training	Department I	Surgeon in Chief Mentor	Fellows (4-6)	DR Training: 2 day/week Clinical Teaching: 1 day/week		8/91-Present
Role of Surgery on Low Back Pain	Department I	Lecturer (Grand Rounds)	Residents (20) Fellows (2)	1/year		4/27/96
Minimally Invasive Spinal Surgery	Department I	Lecturer (Grand Rounds)	Attendings (20) Fellows (6)	1/year		11/20/99
Neck Lesion Approach Review	Department I	Lecturer (Grand Rounds)	Attendings (20) Fellows (6)	1/year		5/19/11

Paul L. Kuflik, M.D.
Curriculum Vitae

19

ADMINISTRATIVE LEADERSHIP APPOINTMENTS

INTERNAL

RESEARCH/CLINICAL/TEACHING/ GENERAL ADMINISTRATION

1/1987-12/1996	Director Scoliosis Clinic Hospital for Joint Diseases Orthopaedic Institute New York, NY
2/1993	Program Chairman, Alumni Meeting Hospital for Joint Diseases Orthopaedic Institute New York, NY
2/1994	President, Alumni Association Hospital for Joint Diseases Orthopaedic Institute New York, NY
12/1996-Present	Associate Director The New York Spine Institute Beth Israel Medical Center New York, NY

Paul L. Kuflik, M.D.
Christopher Vitis

14

PUBLICATIONS

PEER REVIEWED ORIGINAL CONTRIBUTIONS

1. Kuflik P, Anilester A, Stachin SA, Bernstein R. Interscalene brachial plexus block anesthesia for upper extremity surgery. *J Hand Surg Am* 1986 Mar;11(2):246-8.
2. Reich SM, Kuflik P, Newirth M. Translaminar facet screw fixation in lumbar spine fusion. *Spine* 1993 Mar 15;18(4):444-9.
3. Margulies JV, Floman Y, Robin GC, Newirth MG, Kuflik P, Weidenbaum M, Percy JP. An algorithm for selection of instrumentation levels in scoliosis. *Eur Spine J* 1998;7(2):88-94.
4. Cohen J, Lee KS, Henry G, Butzova M, Elmstedt AM, Newirth MG, Kuflik PL, Carden AM, Bitan PD. Intraoperative arterial line artifact associated with SSEPs and motor evoked potentials. *Am J END Technol* 1999 Sep 1;39:163-72.
5. Bitan PD, Newirth MG, Kuflik PL, Carden A, Bloom N, Siddiqui E. The use of short and rigid anterior instrumentation in the treatment of idiopathic thoracolumbar scoliosis: a retrospective review of 24 cases. *Spine* 2002 Jul 15;27(14):1553-7.
6. Tayyab NA, Martiller MM, Rivlin M, Berckushvili K, Bitan PD, Carden AM, Kuflik P, Newirth MG. Efficacy of aprotinin as a blood conservation technique for adult deformity spinal surgery: a retrospective study. *Spine* 2008 Jul 15;33(16):1775-81.
7. Joseph SA Jr, Berckushvili K, Martiller MM, Rivlin M, Sharna K, Carden A, Bitan P, Kuflik P, Newirth M. Blood conservation techniques in spinal deformity surgery: a retrospective review of patients refusing blood transfusion. *Spine* 2008 Oct 1;33(21):2310-5.
8. Chitappati G, Wisbeck S, Berckushvili K, Percy M, Carden AM, Kuflik PL, Newirth MG. The complication rate in revision cervical surgery using previous surgical incisions: a retrospective study. *Spine J* (Submitted)

Paul L. Kuflik, M.D.
Curriculum Vitae

15

PUBLICATIONS (Continued)

OTHER PEER REVIEWED PUBLICATIONS

1. Kokoska A, Kuflik P, Bitan F, Casden A, Newirth M. Evidence-based review of the role of aspirin in blood conservation during orthopedic surgery. *J Bone Joint Surg Am* 2005 May;87(5):1129-36. Review.
2. Wollowick AL, Casden AM, Kuflik PL, Newirth MG. Rheumatoid arthritis in the cervical spine: what you need to know. *Am J Orthop* 2007 Aug;36(8):400-6. Review.
3. Glickman A, Richman S, Morelli BN, Joseph SA Jr, Casden A, Kuflik P, Newirth M, Stephen M. Cauda equina syndrome: a comprehensive review. *Am J Orthop* 2006;Nov;37(11):554-62. Review.
4. Joseph SA Jr, Moreno AP, Brandoff J, Casden AM, Kuflik P, Newirth M, Stephen M. Sagittal plane deformity in the adult patient. *J Am Acad Orthop Surg* 2009 Jan;17(6):378-88. Review.
5. Flaxler flap reconstruction of the cervical spine for repair of osteoradionecrosis. Powell DK, Jacobson AS, Kuflik PL, Fesky MS, Hilsenrath JE, Khourani AS. *Spine J*. 2013 Nov;23(11):e17-21. doi: 10.1016/j.spinee.2013.06.004. Epub 2013 Aug 8. PMID: 23932779 [Published - in process]

BOOKS AND BOOK CHAPTERS

1. Giraole GJ, Kuflik P. Spondylolysis and spondylolisthesis. Orthopedic comprehensive study guide. McGraw Hill; Spring 1997.
2. Giraole GJ, Kuflik PL, Spivak JM. Pediatric spine: Spondylolisthesis. In: Spivak JM, Di Cesare FB, Feldman DS, Koval KJ, Rokito AS, Zuckerman JD, editors. *Orthopedics: a study guide*. New York: McGraw-Hill; 1999. p. 419-26.
3. Lefko LJ, Kuflik PL. Adult spine: deformity. In: Spivak JM, Di Cesare FB, Feldman DS, Koval KJ, Rokito AS, Zuckerman JD, editors. *Orthopedics: a study guide*. New York: McGraw-Hill; 1999. p. 365-71.

NON-PEER REVIEWED PUBLICATIONS

1. Kuflik PL. The Effect of DMSO on Pepsin-Induced Arthritis in Rabbit Knee Joints [research project]. Syracuse (NY): Upstate Medical Center; 1980.

Paul L. Kuflik, M.D.
Curriculum Vitae

16

INVITED LECTURES/PRESENTATIONS

1. Jaffe W, Kuflik PL, Gold S. Normalized and proportionalized femoral stem design: a six year clinical experience. Convention of the American Academy of Orthopaedic Surgeons 1986.
2. Kuflik PL. Overview of treatment of spine fractures. Mt. Sinai Trauma Conference 1986 Jan.
3. Reich J, Kuflik PL, Newirth MG. Translaminar short screw fixation for lumbar arthrodesis. NASS 1991.
4. Giordano C, Kuflik PL, Spivak J, Newirth MG, Moskovich R, Brisson P. A prospective randomized trial of supplemental peripheral nutrition after one stage anterior and posterior spinal reconstructive surgery. Alumni Meeting, Hospital for Joint Diseases 1993 Oct 29.
5. Reiner S, Marsicano J, Newirth MG, Kuflik PL, Bloom N. Circumferential fusion in the adult lumbar spine. Alumni Meeting, Hospital for Joint Diseases 1993 Oct 29.
6. Margulies JY, Floman Y, Newirth MG, Kuflik PL, Robin GC, Mirovsky Y, Farcy JP, Weidenbaum M. Correction of spinal deformities, an algorithm for selection of instrumentation levels and degree of curve reduction. Scoliosis Research Society, Exhibit 18; 1993; Dublin, Ireland.
7. Bendo J, Newirth MG, Spivak J, Kuflik PL, Bloom M, Chung P. Circumferential lumbar fusion using femoral head allograft for anterior interbody fusion. Presented at spine section for the Alumni Scientific Meeting, Hospital for Joint Diseases; 1993 May 19; New York.
8. Bendo J, Newirth MG, Spivak J, Kuflik PL, Chung P. Fresh frozen femoral head allograft for anterior interbody fusion used in circumferential lumbar fusions. Presented at American Academy of Orthopaedic Surgeons; 1994.
9. Bhan P, Newirth MG, Kuflik PL, Casden AM, Bloom N, Siddiqui S, Thomas F. The use of solid anterior instrumentation in the treatment of idiopathic thoraco-lumbar scoliosis: a three-year follow-up study. Presented at Scoliosis Research Society, 33rd Annual Meeting; 1998.
10. Kuflik PL. Sagittal plane deformity in scoliosis surgery. GHCD Meeting; 2000 Dec 8-9; New York.
11. Kuflik PL, Bender A, Silverglaid R. Controversies in back injuries: a multidisciplinary

Paul L. Kuflik, M.D.
Curriculum Vitae

17

panel discussion. NYS Bar Association; 2001 Jan 8.

INVITED LECTURES/PRESENTATIONS (Continued)

12. Blocher HD, Bitan FD, Lipp MI, Panigas SA, Casden AM, Kuflik PL, Newirth MG. Correlation of discogram findings with surgical outcomes following total disc replacement. Presented at Spine Arthroplasty Society Meeting; 2004 Mar; Austria.
13. Kuflik PL. Update on the role of surgery for low back pain. Presented at Grand Rounds, Beth Israel Medical Center Department of Pain Medicine and Palliative Care; 2006 Apr 27; New York.
14. Rivlin M, Mariller MM, Roumpount C, Muth K, Patsopoulos CN, Bitan FD, Casden AM, Newirth MG, Kuflik PL. Fusion rates of patients treated with RhBMP-2 (Infuse) in primary multilevel posterolateral lumbar fusion surgery. Presented at International Meeting on Advanced Spine Techniques; 2006; Athens, Greece.
15. Shatzka KM, Mariller MM, Casden AM, Bitan FD, Kuflik PL, Newirth MG. Spinal deformity surgery in patients refusing blood transfusion. Presented to Spinal Research Society; 2006; Montrose, USA.
16. Shatzka KM, Mariller MM, Casden AM, Bitan FD, Kuflik PL, Newirth MG. Spinal deformity surgery in patients refusing blood transfusion. Presented to International Meeting on Advanced Spine Techniques; 2006; Athens, Greece.
17. Tayyab NA, Mariller MM, Rivlin M, Casden AM, Bitan FD, Kuflik PL, Newirth MG. Efficacy of spectrin as a blood conservation technique for adult deformity spinal surgery: a retrospective study. Presented as oral presentation at International Meeting on Advanced Spine Techniques; 2007; Paradise Islands, Bahamas.
18. Braddock J, Katsen Berakashvili K, Casden AM, Kuflik PL, Newirth MG. Change in neurophysiologic parameters after interbody fusion. Presented at the Spine Institute's 13th Annual Fellows Conference; 2008 May 28; New York.
19. Mankowitz M, Berakashvili K, Casden AM, Kuflik PL, Newirth MG. Patient satisfaction following three or more level circumferential spinal fusion for degenerative conditions of the lumbar spine. Presented at the Spine Institute's 13th Annual Fellows Conference; 2008 May 28; New York.
20. Joseph SA Jr, Berakashvili K, Casden AM, Kuflik PL, Newirth MG. Two-stage anterior and posterior reconstructive surgery: early staged (1-2 days wait) vs. late staged (5-7 days wait) procedures. Presented at the Spine Institute's 13th Annual Fellows Conference; 2008 May 28; New York.
21. Kuflik PL. The role of minimally invasive spine surgery. Presentation to the Northern Valley Rehabilitation Society; 2009 Jan 20.

Paul L. Kuflik, M.D.
Cordusum Vitae

18

INVITED LECTURES/PRESENTATIONS (Continued)

22. Morelli B, Wisnack S, Casden AM, Kuflik PL, Newirth MG. Sexual function in men and women after lumbar fusion surgery for low back pain. Presented at the Spine Institute's 14th Annual Fellows Conference; 2009 Apr 30; New York.
23. Costas B, Morelli B, Wisnack S, Casden AM, Kuflik PL, Newirth MG. Change in neuroforaminal dimensions after ALIF vs TLIF. Presented at the Spine Institute's 14th Annual Fellows Conference; 2009 Apr 30; New York.
24. Costas B, Morelli B, Wisnack S, Casden AM, Kuflik PL, Newirth MG. Change in neuroforaminal dimensions after ALIF vs TLIF. Presented at the International Meeting on Advanced Spine Techniques; 2009 Jul; Vienna, Austria.
25. Kuflik PL. Update on minimally invasive spinal surgery. Presented at Grand Rounds, Beth Israel Medical Center Department of Pain Medicine and Palliative Care; 2009 Nov 20; New York.
26. Hishnck S, Wisnack S, Casden AM, Kuflik PL, Newirth MG. Preoperative vitamin K to minimize scoliosis operative blood loss. Presented at the Spine Institute's 15th Annual Fellows Conference; 2010 Apr 28; New York.
27. Yaghoobian A, Wisnack S, Casden AM, Kuflik PL, Newirth MG. Effect of EMI on outcomes and complication rate after spine surgery. Presented at the Spine Institute's 16th Annual Fellows Conference; 2011 Apr 28; New York.
28. Kuflik PL. Direct lateral interbody fusion (DLIF) of the lumbar spine - indications, technique, results. Presented at Grand Rounds, Beth Israel Medical Center Department of Orthopedic Surgery; 2011 May 19; New York.
29. Casden AM, Kuflik PL, Newirth MG. Cases of hardware failure: trials and tribulations. Presented at the Spine Institute's 17th Annual Fellows Conference; 2012 Apr 26; New York.
30. Newirth MG, Kuflik PL. So you think you want to be a spine surgeon: what was I thinking? Presented at the Spine Institute's 17th Annual Fellows Conference; 2012 Apr 26; New York.

Paul L. Kuflik, M.D.
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19

VOLUNTARY PRESENTATIONS

1. Ratte J, Kuflik PL, Newirth MG. Translaminar facet screw fixation for lumbar arthrodesis. AAOS 1992. Poster Exhibit.
2. Lee K, Cohen J, Newirth MG, Kuflik PL, Tsoel J, Henry G. Intraoperative monitoring of transcranial electrical motor evoked potentials during scoliosis surgery. Abstract Presentation, American Clinical Neurophysiology Society Meeting; 1998.
3. Tayyeb NA, Mariller MM, Rivlin M, Caaden AM, Bitan FD, Kuflik PL, Newirth MG. Efficacy of z-protein as a blood conservation techniques for adult deformity spinal surgery: a retrospective study. Presented as e-poster at Scoliosis Research Society; 2007; Edinburgh, Scotland.
4. Khayfite V, Math K, Caaden AM, Kuflik PL, Newirth MG. Change in neurocranial dimensions after lumbar interbody fusion. Presentation as e-poster at 15th International Meeting on Advanced Spine Techniques; 2008 Jul; Hong Kong, Hong Kong.
5. Joseph BA Jr, Berchashvili K, Caaden AM, Kuflik PL, Newirth MG. Incidence of stress fracture after lumbar fusion. Presentation as e-poster 15th International Meeting on Advanced Spine Techniques; 2008 Jul; Hong Kong, Hong Kong.

EXHIBITS

1. Letko L, Bloom N, Kuflik PL, Newirth MG. Anterior extrapleural thoracoplasty for scoliosis: an alternative technique. Scoliosis Research Society; 1995 Sept; Atlanta.

ABSTRACTS

1. Lee KS, Cohen J, Newirth MG, Kuflik PL, Tsoel J, Elowitz EH, Bloom ND, Carbone FF, Kaufman AG, Henry G. Intraoperative monitoring of transcranial electrical motor evoked potentials: a review of 50 cases. Neurology 1998;50:A165.
2. Henry G, Cohen J, Lee KS, Newirth MG, Kuflik PL, Caaden AM, Bloom ND, Bitan FD. Technical aspects of transcranial electrical motor evoked potentials. Am J END Technol 1998;38:308.

B

Legal Cases

Testified/Deposed

Case	Location	Date
Hector Reynosa	Supreme Court, Kings County	6/15
Richard Marzec v. Garsh Garage Corp., et al.	Supreme Court, New York County Index No.: 103556/11	1/28/14
Michele Brown (non-party witness)		10/2013

C



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January 25, 2017

Michael Giacomelli Esq.
Lewis, Brisbois, Begeard & Smith
77 Water Street, Suite 2100
New York, New York 10005

Re: Zbigniew Papiez
Date of Injury: 10/31/2013

Dear Mr. Giacomelli,

I performed an independent medical examination with regard to the spine on Mr. Papiez at my office at 5 East 98th Street, New York City, New York 10029 at approximately noon on December 15, 2016. A Polish Interpreter Mr. Spinner from Starr Interpreters was present throughout. Mr. Zaborowski a representative of the plaintiff's attorney Edelman and Edelman was present as well. Mr. Papiez's NYS driver's license was used for identification.

The history as obtained from Mr. Papiez is that he is a 47-year-old right hand dominant gentleman who was shopping in Home Depot on October 31, 2013 when brick(s) fell on his back. There was no loss of consciousness. He had the immediate onset of pain in the upper spine and neck. He was knocked down to his knees. He was taken by 911 ambulance to Elmhurst Hospital emergency where he was evaluated and treated. He was discharged home and told to follow-up with his primary care doctor. He was not employed at the time, and he has not been employed since the accident. He was previously a contractor. He was treated with injections and epidural steroid injections and ultimately underwent surgery by Dr. Andrew Merola approximately one year after the event. He does not recall the exact date. The surgery was performed at Columbia Presbyterian Downtown Manhattan. Prior to the surgery he had pain in the back of his neck, which he rates as an 8 to 9 on a scale of 0 to 10. The pain radiated to both shoulders, both hands, and arms with numbness in both of his hands. Following the surgery the pain has lessened so that it is now a 4 to 5 on a scale of 0 to 10, but he remains with numbness and tingling of the fourth and fifth digits of his right hand. He denies any problems with his dexterity or fine motor control. He attended physical therapy post operatively, but that stopped one to two weeks ago. He exercises on his own. Prior to the surgery he was treated by Dr. Podhorodecki. Currently he has pain in the back of his neck that he rates as a 4 to 5 on a scale of 0 to 10. There is numbness in the radial fourth and fifth digit of

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the right hand. He denies any problems with the remainder of his spine. He wears a soft collar because he claims it makes him feel better and safer. He feels that the collar "suits him". He claims that since his surgery he feels like there is something stuck in his throat.

Past medical history is significant for a work related injury eight years prior to this accident. He was treated with an anterior cervical discectomy and fusion by Dr. Merola. He does not recall when the surgery was performed. He claims that he got all better following that surgery with no residual issues, though he never returned to work. He claims he did not return to work because his wife started a preschool and he felt that he should be available to help out. He said for approximately four to five years after his first surgery he did not do any work around the house, but then started to resume doing work around the house and was functioning almost normally, he just chose not to return to work. His pain is aggravated by sleeping on his back or sitting in a chair. The only thing that makes him feel better is medications and an ointment that he puts on his back.

He can sit comfortably usually for 5 minutes with a maximum of 60 minutes; he can stand for 5 to 10 minutes and walk 3 or 4 blocks. He denies any bladder or bowel dysfunction. He had hernia surgery approximately 25 years ago, and left lung surgery greater than 10 years ago. He denies any other traumatic events. Past medical history is otherwise negative. He denies any other medical problems.

Current medications are Percocet 4 tablets each day, Gabapentin 300 mg at night, occasionally taking 600mg, and an ointment which he puts on the back of his neck. He denies any allergies to medications. He smokes one pack per day. He does not consume alcohol. He is able to perform his activities of daily living. He is able to drive short distances of 10 to 15 minutes.

Mr. Papiez was instructed before the examination and during the examination to report any pain and to avoid performing any maneuvers that he felt could worsen his symptoms or condition. He indicated that he understood this. Opportunities for breaks during the examination were offered. The examination was completed without complaints or signs of injury.

On examination he arrived wearing a soft cervical collar that he removed for the examination. He is in no apparent distress. He is a pleasant, cooperative gentleman. He moves about the exam room without any difficulty. He gets up

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and down from the examination table without difficulty. He independently changed into a gown for the examination. He is 5'8" tall and weighs 175 pounds. He is a well-nourished, well-developed gentleman. He has a normal gait. He is able to toe walk, heel walk and demonstrate tandem gait. On active range of motion testing of the lumbar spine he will bend forward 80 degrees, extend 40 degrees, has 20 degrees of right and left lateral bending, and 30 degrees of right and left rotation. His motion is fluid and unrestricted. On active range of motion testing of the cervical spine he will demonstrate 45 degrees of flexion, 20 degrees of extension, 20 degrees of right and left lateral bending, and 40 degrees of right and left rotation. Motion is restricted by subjective complaints of pain. A goniometer was used to assist in measurement.

Normal range of motion lumbar spine:

Flexion 75-90 degrees
Extension 25-30 degrees
Lateral right bending 30 degrees
Lateral left bending 30 degrees
Rotation to the right 30 degrees
Rotation to the left 30 degrees

Normal range of motion of the cervical spine:

Flexion 45-60 degrees
Extension 45-60 degrees
Lateral bending to the right 40-45 degrees
Lateral bending to the left 40-45 degrees
Lateral rotation to the right 70-90 degrees
Lateral rotation to the left 70-90 degrees

He has two parallel well-healed non-tender transverse incisions in the base of his neck on the left side. They are each 3 cm in length. He informs me the lower one is the newer incision. Motor examination of the upper and lower extremities is 5/5. Sensation is diminished in the right upper extremity in a global non-dermatomal fashion. There is no evidence of clonus, Hoffmann's or Babinski's, or Spurling's sign. Straight leg raising is negative bilaterally. Deep tendon reflexes are 1 plus in the upper extremities, 3 plus in the lower extremities. There is no evidence of atrophy. There is no para spinal muscle spasm or tenderness.

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I have reviewed the following medical records:

- 1. Examination before trial of Mr. Papiez 02/16/16.**
- 2. Medical records All County Radiology.**
- 3. Medical records New York Ortho, Sports Medicine & Trauma.**
- 4. Prehospital care FDNY report 10/31/13.**
- 5. Medical records Andrew Marola, M.D.**
- 6. Verified bill of particulars.**
- 7. Medical records Dr. Grimm MD.**
- 8. Medical records Dr. Podhorodecki MD.**
- 9. Medical records Elmhurst Hospital Center.**
- 10. Medical records Green Point Diagnostic Imaging.**
- 11. Medical records Markow Apteka Pharmacy.**
- 12. Medical records New York Presbyterian Hospital lower Manhattan.**
- 13. Medical records Park Place Medical Imaging.**
- 14. Medical records Personal Health Imaging.**
- 15. Medical records AMR Nurse Consultants Kimberly Kushner RN**
- 16. Expert report J. Kahn MD**
- 17. Expert report Vocational Economics**

I reviewed the following imaging studies.

- 1. MRI of the cervical spine performed April 29, 2015 at All County LLC.**
- 2. Ap and Lat x-ray of the cervical spine Greenpoint Radiology 11/19/14**
- 3. Ap and Lat x-ray of the cervical spine Greenpoint Radiology 8/3/15.**
- 4. MRI Cervical Spine Park Place Medical Imaging 12/9/13.**

Prehospital care report summary dated October 31, 2013 indicates Mr. Papiez was complaining that his neck hurts. "He was complaining of neck pain after a brick paver fell on him". He was placed in a cervical collar and long board. He was noted to be neurologically intact. There were no visible injuries. His vitals were stable.

The Elmhurst Hospital emergency room records indicate that Mr. Papiez arrived via ambulance. He was complaining of neck pain after bricks fell on him. There was no loss of consciousness. He reported that he takes Vicodin daily for the last five years after a previous fall at work and cervical spine fusion surgery. Examination revealed that his neck was supple. There was no cervical, thoracic

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or lumbar spine tenderness. He was able to turn his head left and right greater than 45 degrees. A CT scan of the brain was noted to be normal. He had no midline cervical tenderness and full range of motion of his neck. At the time of discharge from the emergency room his pain level was a 1 on a scale of 0 to 10. It would appear his complaints and findings in the cervical spine were so minimal imaging studies of the neck were not performed.

On 11/6/2013 Dr. Crone notes an MRI performed on May 6 2006 demonstrated a right C5-C6 central right hemiated disc, small central herniation at C6-C7 central subligamentous protrusion C4-C5.

I reviewed a report of an MRI of the cervical spine performed on December 9, 2013 at Park Place Medical Imaging. The report describes previous surgery at the C5-C6 level. There is a right foraminal para-sagittal herniation at C6-C7 with hemi cord compression and impingement on the exiting C7 and C8 nerve roots. I reviewed these images. I do not appreciate the right foraminal para-sagittal disc herniation mentioned in the report. There is neither hemi-cord compression appreciated nor C7 or C8 nerve root impingement. There is no evidence of acute injury. There is a shallow right disc - osteophyte complex at C6-C7 that is pre-existing, of chronic duration and not traumatically induced. It is not causing spinal cord or nerve root compression.

Dr. Merola's records from prior to this accident indicate that Mr. Papiez had been involved in a work related injury. He noted in November 2007 that Mr. Papiez had a severe and unremitting mechanical axial neck pain with radiation into both upper extremity C6 distributions. He performed an anterior cervical discectomy and fusion at the C5-C6 level on 12/11/07. On July 14, 2008, Dr. Merola notes Mr. Papiez has adjacent segment disc herniations, indicating the C6-C7 disc pathology was present already in July 2008. He notes Mr. Papiez is totally disabled. On February 16, 2009, and on June 28, 2010 he notes that Mr. Papiez continues to have severe chronic neck pain, marked restriction of motion with 20 degrees of flexion, 0 degrees of extension, lateral bending to the right of 25 degrees and to the left of 15 degrees, rotation to the right of 10 degrees and rotation to the left of 5 degrees. He has difficulty in performing his activities of daily living, and finds that he has a total permanent disability. He had numbness tingling and absent sensation in the C4, C5 and C6 distributions. This would include the distribution of his current complaints of numbness tingling in his right 2nd and 3rd digits. Dr. Merola notes residual neurologic deficits, the need for chronic narcotic medication, assistance with activities of daily living, and chronic

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pain. In 2010, three years prior to the event on 10/31/13, Dr. Merola suggests further cervical spine surgery may very well be needed.

Dr. Podohorecki notes in July 2013 and earlier in the month in October 2013 Mr. Papiez has chronic cervical radiculopathy and is requiring chronic narcotic medication. He has been under her care essentially continuously since 2006 for his back, neck and cervical radiculopathy. In April 2006, Dr. Podohorecki notes issues at the C6-C7 level. The pharmacy records indicate he was already on long-term high dose narcotic pain medication prior to the event in 2013.

I reviewed the operative report dictated by Dr. Merola on September 3, 2014. Preoperative diagnosis was disc herniation C6-C7 segment producing significant severe and progressive upper extremity C7 radiculopathy with cord irritation, evidence of myelopathy, history of prior ACDF C5-C6 segment, acute onset herniation radiculopathy and myelopathy. The postoperative diagnosis was the same. The procedure was an anterior cervical discectomy C6-C7 with partial corpectomy at C6, partial corpectomy at C7, decompression of spinal nerve roots at C6-C7, placement of biomechanical device at C6-C7, placement of anterior locking plate screw implant at C6-C7, autogenous bone graft, allograft bone grafting, intraoperative fluoroscopy, intraoperative evoked potential monitoring, exploration of spinal fusion at C5-C6. Intraoperatively Mr. Papiez was found to have a solid arthrodesis at C5-C6 with a disc herniation at C6-C7. A review of the post-operative x-rays does not show evidence of hemi-corpectomies having been done but rather a routine anterior cervical discectomy and fusion. It would appear the previously applied plate at C5-C6 was left in place making the exploration at C5-C6 a rather minimal undertaking.

I reviewed a report of an MRI of the cervical spine performed April 29, 2015 at All County LLC. The report indicates there was a previous anterior cervical discectomy and fusion noted at C5-C6 and demonstrated new surgery at C6-C7. I reviewed these images as well. Other than the evidence of the surgery at C6-C7, I do not appreciate any significant changes compared to the MRI study performed on December 9, 2013.

A report of a post operative x-ray performed August 6, 2015 at Green Point Diagnostic Imaging showed evidence of the surgery from C6 to C7 without any other significant findings. The study does not show a hemi-corpectomy having been performed.

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I disagree with the report from Ms. Kushner. There is no causally related indication for continued Physiatric care including injections, nerve blocks, spinal stimulator, morphine pump, physical therapy, TENS unit, assistance with ADL's, transportation assistance, or household assistance. Mr. Papiez was already on high dose narcotic pain medication prior to the 10/31/13 event. To the extent he may need higher doses in the future that is a consequence of the natural history of treating chronic pain with high dose narcotics. As tolerance develops, higher doses are needed. Mr. Papiez has been taking narcotics chronically since at least 2006.

In summary, Mr. Papiez was involved in an accident at Home Depot when he was struck on the back of his upper back or neck. Examination at that time revealed no visible sign of injury, unrestricted full range of motion of the cervical spine and he was neurologically intact. His pain in the Elmhurst ED at discharge was a 1 on a scale of 0 to 10. Findings were most consistent with a contusion. He is status post a work related injury to his neck in 2006 ultimately treated with an anterior cervical discectomy and fusion in December 2007. It is well documented he already had a disc herniation at C6-C7 in 2006. He never returned to work following that injury. He was still receiving medical treatment for a cervical radiculopathy and requiring narcotic pain medication on a daily basis at the time of the event on 10/31/13.

His presentation is not consistent with a new onset acute disc herniation at C6-C7 or even exacerbation of a pre-existing asymptomatic disc herniation at C6-C7. He had virtually no significant findings in the Emergency facility following the injury. The history and cervical MRI performed after the event on 10/31/13 is most consistent with adjacent segment disease at C6-C7 rather than an acute injury. Prior to this injury it is well documented that his range of motion was markedly diminished, and that he was permanently disabled. He had virtually identical complaints and physical findings prior to 10/31/13 as he does now. Approximately three years following his first surgery in 2007, he was found to have marked restriction of motion of the cervical spine and a permanent total disability. He had absent sensation with numbness and tingling in the identical distribution as now. One would not anticipate a change in his condition between 2010 and 2013 if he has the complaints and findings described nearly three years post-surgery, i.e. the changes described in 2010 are permanent. Additionally, he was been under the continuous care of a Physiatrist for cervical radiculopathy including high dose narcotic pain medication right up to immediately prior to this injury.

Re: Zbigniew Papiez
Date of Injury: 10/31/2013



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Objectively there was no change in his condition from before 10/31/13 to after. His objective complaints and physical findings were unchanged from before to after. Currently objectively, he is no worse off than he was prior to the event on 10/31/13. He is still requiring chronic pain medication as he was prior to this alleged accident. His complaints now are subjective. He is neurologically intact. His diminished range of motion is subjective and essentially identical to what it was prior to this event. The soft collar that he chooses to wear likely contributes to his issues by unnecessarily restricting motion and contributing to his stiffness, and weakening his musculature.

His complaints, physical findings and the surgery performed are more consistent with a diagnosis of adjacent segment disease and chronic radiculopathy than a traumatic injury. Mr. Papiez has chronic pain. He had complaints out of proportion to the objective information both before and after the event on 10/31/13. There is no causally related indication for further treatment at this time. There is no objective change in his disability as a consequence of the event on 10/31/13. He is no more disabled now than he was prior to this event. There is no medical contra indication relative to the spine to him participating in activities without restriction.

I, Paul Kuflik MD., being a Diplomate of the American Board of Orthopedic Surgeons, am duly licensed to practice medicine in the State of New York pursuant to CPLR, section 210.6 and hereby affirm under the penalties of perjury the foregoing is true to the best of my knowledge except as to those matters stated on information and belief, and as to those matters I believe to be true. The above claimant was examined according to the restrictive rules concerning an independent medical examination. It is therefore understood no doctor patient relationship exists or is implied by this examination. The claimant is examined in reference to that specific complaint emanating from the original injury. Any other medical conditions, which were either unreported or felt to be unrelated to the original injury, are considered to be beyond the purview of this examination.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Paul Kuflik".

Re: Zbigniew Papiez
Date of Injury: 10/31/2013



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November 7, 2016

Michael N. Giacomelli
Partner
Lewis Brisbois Bisgaard Smith
Michael.Giacomelli@lewisbrisbois.com
77 Water Street, 21st Floor
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RE: Zbigniew Papiez

**Date of IME: ~~November 16, 2016 @ 8AM~~ Rescheduled
December 15 @ Noon.**

Location: 5 East 98th Street
New York City, NY 10029
4th Floor

**Fee: \$7500 prepaid for IME, record, x-ray review report
preparation, discussion.**

Please send records and payment to:

Paul Kuflik MD



Or electronically to



Thank you.

AFFIDAVIT OF SERVICE

[illegible]

DONNA J. LUDWICKI, being duly sworn, deposes and says, that the deponent is not a party of the action, is over 18 years of age and resides in the County of Queens, City of New York.

That on the ____ day of September, 2017, the undersigned served the within **NOTICE OF MOTION TO PRECLUDE and AFFIRMATION IN SUPPORT WITH EXHIBITS** upon the attorneys named below:

Edelman & Edelman, P.C.
61 Broadway – Suite 3010
New York, New York 10006

at the address(es) designated by said attorney(s) for that purpose by depositing a true copy of same enclosed in a postpaid, properly addressed wrapper, in an official depository under the exclusive care and custody of the United States Post Office within the State of New York.

DONNA J. LUDWICKI

Sworn to before me this _____
day of September, 2017

Notary Public

Shadena Morant-Daniels
Notary Public, State of New York
No. 24-4986342
Qualified in Kings County
Commission Expires Sept. 9, 2021